

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition must be in English and submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001, and received not later than thirty (30) days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under § 389.31 of this part. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he/she must state the reason they were not presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988; 72 FR 55702, Oct. 1, 2007; 80 FR 59073, Oct. 1, 2015]

§ 389.37 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he/she determines to reconsider any rule, he/she may issue a final decision on reconsideration without further proceedings, or he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.39 Direct final rulemaking procedures

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the FEDERAL REGISTER.

(a) *Types of actions appropriate for direct final rulemaking.* Rules that the Administrator determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the FEDERAL REGISTER as direct final rules. These include non-controversial rules that:

- (1) Make non-substantive clarifications or corrections to existing rules;
- (2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;
- (3) Affect internal FMCSA procedures such as filing requirements and rules governing inspection and copying of documents;
- (4) Update existing forms; and
- (5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

(b) *Adverse comment.* An adverse comment is a comment that FMCSA judges to be critical of the rule, to suggest that the rule should not be adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

- (1) Comments recommending another rule change, unless the commenter states that the direct final rule will be ineffective without the change;
- (2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;
- (3) Comments in support of the rule; or
- (4) Comments requesting clarification.

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(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the FEDERAL REGISTER, if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) *Withdrawal of a direct final rule.* (1) If FMCSA receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the FEDERAL REGISTER, before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

[75 FR 29916, May 28, 2010]

APPENDIX A TO PART 389

**AFFIDAVIT IN SUPPORT OF REQUEST
FOR CONFIDENTIALITY**

I, _____, pursuant to the provisions of 49 CFR part 389, section 389.9, state as follows:

(1) I am [insert official's name, title] and I am authorized by [insert name of entity] to execute this Affidavit on its behalf;

(2) I certify that the information contained in the document(s) attached to this Affidavit is submitted voluntarily, with the claim that the information is entitled to confidential treatment under 5 U.S.C. 552(b)(4);

(3) I certify that the information contained in the documents attached to this Affidavit is of a type not customarily disclosed to the general public by [insert name of entity];

(4) I certify that, to the best of my knowledge, information and belief, the information contained in the documents attached to this Affidavit, for which confidential treatment is claimed, has never been released to the general public or been made available to any unauthorized person outside [insert name of entity];

(5) I certify that this information satisfies the substantive criteria set forth in the notice published in the FEDERAL REGISTER on _____ [insert date of rule-specific publication in month/day/year format] under FMCSA Docket Number [insert docket number].

(6) I make no representations beyond those made in this Affidavit, and, in particular, I make no representations as to whether this information may become available outside

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[insert name of entity] due to unauthorized or inadvertent disclosure; and

(7) I certify under penalties of perjury that the foregoing statements are true and correct.

Executed on this _____ day of _____,
(signature of official)

[80 FR 32865, June 10, 2015]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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